

# FISH & RICHARDSON P.C.

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1855-1930

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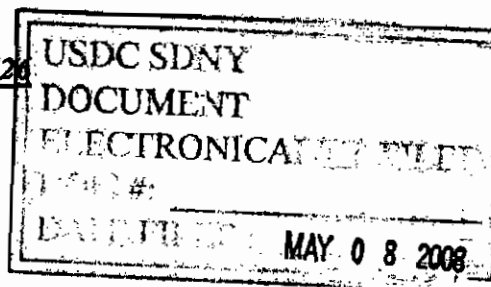
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May 7, 2008

Honorable Laura Taylor Swain  
United States District Court  
Southern District of New York  
U.S. Courthouse  
500 Pearl Street, Room 755  
New York, NY 10007-1312

**MEMO ENDORSED**

Re: Aedes De Venustas, Inc. v. Venustas International, LLC  
Civil Action No. 1:07-CV-04530-LTS-THK

Dear Judge Swain:

We are new counsel for Defendant, Batallure Beauty LLC, f/k/a Venustas International, LLC ("Defendant") in the above-referenced matter.<sup>1</sup> We write to respectfully request the Court's permission to withdraw the motion for partial summary judgment that was filed by prior counsel for Defendant, and file a revised motion for partial summary judgment.

As the Court is aware, on November 13, 2007, permission was granted to Defendant's prior counsel to file a motion for partial summary judgment on the issue of willful deceptiveness; specifically, whether a finding of willfulness deceptiveness is necessary for an award of an infringer's profits in the Second Circuit. On January 25, 2008, Defendant filed a motion for partial summary judgment on this issue, which was accompanied by, among other things, a Memorandum of Points and Authorities, and a Local Civil Rule 56.1 Statement. Defendant's motion has been pending for over three months without a response from Plaintiff.

As new counsel for Defendant, we only recently were able to review the motion papers previously filed by Defendant, and determine that a number of relevant authorities were not included. Additionally, subsequent to the filing of Defendant's partial summary judgment motion papers, Plaintiff undertook discovery relevant to the motion. Defendant wishes to include relevant information from this new discovery in its renewed motion.

<sup>1</sup> Prior counsel for Defendant, Robert Shepherd, Esq. filed a Motion to Withdraw as Attorney for Defendant on Wednesday, April 30, 2008. Immediately thereafter, on May 1, 2008, Fish & Richardson filed a Substitution of Counsel. Notice of both electronic filings were sent to all attorneys involved in this matter on May 1, 2008.



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In an e-mail to Plaintiff's counsel yesterday, we requested Plaintiff's permission to withdraw Defendant's motion; however, counsel for Plaintiff declined.

Accordingly, we respectfully request the Court's permission to withdraw the motion papers previously filed by Defendant, revise them accordingly, and file a revised motion for partial summary judgment, on the very same issue, by Friday, May 23, 2008.

We further request the Court to order the following briefing schedule on the motion:

Defendant's renewed partial summary judgment motion to be filed by: May 23, 2008


Plaintiff's Opposition partial summary judgment to be filed by: June 6, 2008

Defendant's Reply to be filed by: June 13, 2008

We thank the Court for its attention to this matter.


Respectfully submitted,

FISH & RICHARDSON P.C.

  
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David R. Francescani (DF 9701)  
Kristen McCallion (KM 5593)

*Counsel for Defendant*

BATALLURE BEAUTY LLC,  
F/K/A VENUSTAS INTERNATIONAL, LLC

 5/7/08  
\_\_\_\_\_  
LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE

The foregoing  
requests are  
granted subject to  
compliance with individual  
The Clerk of Practice Rule 2B.  
Court is respectfully  
requested to  
terminate docket  
Item # 48.  
SO ORDERED.

cc: Joseph M. Heppt (via facsimile: 212-973-0891)